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## GLOBAL CERTIFICATIONS

At the CECOM Acquisition Center-Washington (CAC-W), as with many Federal government procuring agencies, the length of time required to conduct best value, tradeoff process<sup>1</sup> procurements for commercial information technology (IT) products had become a matter of increasing concern. Requiring activities were anxious to have ordering vehicles in place which afforded access to the latest technology. Procurement cycle times were such that proposed technology often lost some of its cutting edge by the date of award. In order to shrink the period for processing acquisitions, a number of techniques were considered. One of the techniques was the use of a global certification.

Under the global certification approach, a certification is used as an alternative to the submission of detailed material in a proposal for the purpose of establishing compliance with the minimum technical requirements of a solicitation. The global certification approach essentially shifts to the contractor the responsibility for verifying that the minimum requirements have been satisfied. While the submission and evaluation of information on the technical solution is still required to support the tradeoff process typically used in the procurements conducted by CAC-W, the global certification technique provides an opportunity to reduce both the number of evaluators and the amount of time required for the technical evaluation.

This technique has been used at CAC-W solely in the commercial IT arena. As discussed below, the technique may not be appropriate for every procurement and a careful analysis should be conducted of the risks and benefits before applying it to other types of acquisitions.

Historically, a number of factors contributed to the length of time required for processing IT acquisitions. Solicitations typically requested the submission of written proposals which were required to address compliance with the minimum requirements as well as describe aspects of the proposed solution that might be entitled to credit under the evaluation criteria. Offerors were required to address each paragraph of the Statement of Work and

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<sup>1</sup> "Tradeoff process" is the term used in the new FAR Part 15, Section 15.101-1, to describe the process formerly known as "best value."

Specifications to reflect their commitment to comply with the minimum requirements. Instructions placed offerors on notice that a simple statement of commitment to perform a requirement would not be acceptable. Instead, the offerors were required to state not only that they agreed to perform each requirement but to describe how the requirement would be performed.

In addition to the narrative, technical literature was requested for the offered products. As CAC-W procurements for IT usually involve extensive requirements and numerous contract line items (CLINs), the proposal narrative tended to be voluminous and the technical literature extensive. In order to assist the evaluators in handling this material, matrices had to be submitted that cross-referenced the proposal narrative and technical literature to the requirements. The process of evaluating in order to determine whether offers satisfied minimum requirements, as distinguished from the assigning of credit for aspects of the technical solution under the evaluation criteria of the solicitation, contributed to bulkier proposals and a lengthier, more complicated evaluation process.

The proposal narrative and technical literature were carefully reviewed by evaluators to validate compliance with the minimum requirements. The evaluation of the traditional proposals required relatively large numbers of evaluation personnel. The evaluation process was laborious and time-consuming. Inevitably, the evaluators noted numerous deficiencies in the proposals. However, many of these deficiencies were minor in nature and most resulted from careless proposal writing and not from defects in the products themselves.

In the spring of 1996, CAC-W started to use global certifications to establish compliance with minimum technical requirements. The first procurement to employ this technique was the Army Personal Computer-2 (PC-2) acquisition, which involved dual indefinite delivery, indefinite quantity awards for commercial hardware and software with help desk and warranty support. The current practice is to include in the solicitation a certification for each offeror to sign, which states that the offer meets the requirements, including those in the Specifications and Statement of Work, and that the offeror agrees to make any necessary changes, at no additional cost to the government, in the event that the offered products or services fail to comply with the requirements.<sup>2</sup> There are related references to the global

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<sup>2</sup> The text of the provision in the Personal Computer-2 procurement is as follows: "The offeror hereby certifies that the offer meets all the requirements of the solicitation including Part D-1, the Specifications and

certification in the Specifications and Statement of Work and in the Instructions to Offerors. In addition, a statement is included in the order of precedence provision of the solicitation to establish the priority of the certification over Part B of the Schedule after an award is made.

The focus of the technical proposal is information related to the evaluation criteria that might earn credit for an offeror in the tradeoff process. Insofar as compliance with the requirements is concerned, the technical proposal essentially consists of a CLIN list and the global certification. Technical literature is normally omitted entirely or solicited on a limited basis. (Under the latter alternative, a few key requirements are identified in the solicitation and detailed technical information for those requirements is solicited and evaluated.)

To date, the procurements employing the global certification technique have involved oral presentations with the slides for the presentation included in the written proposal. The oral presentations address the technical area. The Instructions to Offerors make clear, however, that the focus of the presentation is to be the quality of the proposal, not compliance with the requirements, which is established through the certification. Depending upon the procurement, the oral presentation may involve the examination of a bid sample and the conduct of testing. While not expressly directed toward requirements validation, the methods used to evaluate proposal quality do contribute indirectly to the confirmation of compliance with the requirements. The oral presentation of the technical solution, the examination of bid samples and the conduct of tests on the offered products all provide opportunities to identify proposal deficiencies, if any, and have them resolved.

The use of a global certification permits the submission of shorter written proposals. In conjunction with other streamlining initiatives, the certification has contributed to a reduction in the processing time for evaluation and award. Technical evaluations now require only a few evaluators. The number and complexity of discussion issues have diminished substantially.

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Statement of Work, except as noted below. In the event that the offered products or services, including the provision of substitutions/additions/insertions as per Part C-1-1, paragraph g, and correction of ordered products through repair or replacement under warranty, fail to meet any requirements, the Contractor shall, at no additional cost, make any changes necessary to the products or services to comply with the contract requirements." The certification that offered products meet the requirements applies to the initial offer and, through the reference to Part C-1-1, to products added later as substitutions, additions or insertions.

Cycle time has been reduced to four months for acquisitions that formerly required eight to ten months to complete. During debriefings, vendors consistently applaud the ability of the government to meet the schedule and complete the acquisition in a more timely manner.

The benefit from the global certification is not confined to the evaluation process. The certification provides the government with a useful tool in the event that an issue of noncompliance crops up during performance. An awardee has a fundamental duty to deliver the products set forth in Part B of the contract Schedule. When one of those products proves to be noncompliant, the global certification makes clear not only that a correction must be provided to make the products compliant with the Specifications and Statement of Work but that the correction must be provided at no cost to the government.

The experience of CAC-W has been very positive in procurements for commercial IT. On the other hand, the global certification may not be appropriate for every procurement. Prudence dictates that careful consideration be given to the risks discussed below as well as to the benefits before adopting the global certification for other types of procurements.

As the government does not conduct a detailed evaluation to determine whether offers comply with minimum requirements when a global certification is used, it is possible that an issue of noncompliance may not be discovered until contract administration. In situations where the correction of the problem is costly, there is a potential for delay in the event the awardee plays for time while it attempts to identify a solution for a substitute product that is not unprofitable. Likewise, there is a potential that the awardee will be tempted to dispute the government's interpretation of the Specifications in order to avoid liability entirely. If the issue is of significant magnitude, it could become necessary for the government to terminate the contract.

While the emergence of a noncompliance issue during administration is a potential risk, it is not one that is unique to procurements which use a global certification. Nor has noncompliance proved to be a particularly significant problem when a global certification is used, based upon the experience of CAC-W thus far in procurements for IT. Nonetheless, without the use of a detailed evaluation process to identify noncompliance issues before award, there may be an added risk of noncompliance which should be considered in deciding whether to use this technique.

For those assessing the risk of noncompliance in other types of procurements, it may be useful to examine the factors which have contributed to the limited impact of noncompliance upon the IT procurements by CAC-W. The experience of CAC-W with procurements of IT has been favorable due to the fact that strong incentives exist for an awardee with a compliance problem to provide a compliant substitute even if it means that the contractor will have to absorb any cost difference between the proposed product and the substitute. One such incentive arises from the fact that there are other ordering vehicles available to government buyers of commercial IT. For example, there are Federal Supply Schedules, and multiple-agency and Army indefinite quantity, indefinite delivery contracts. In addition, CAC-W procurements often employ a dual award strategy. The competition from other ordering vehicles places pressure on contractors to correct performance problems in a timely manner in order to prevent the loss of sales.

Additionally, past performance is a significant evaluation factor in IT acquisitions conducted by CAC-W. Failure to correct noncompliance problems that are identified during administration will establish an unfavorable past performance record. If an awardee is unwilling to meet its contractual commitment to make a necessary correction, the contractor may lose future contract awards by CAC-W and other contracting activities. It is in the interest of the successful awardee to address noncompliance issues in order to avoid impairing the prospects for award in other acquisitions.

Another risk relates to the potential for a bid protest based upon the acceptance of an offer that includes a noncompliant product. However, the use of a global certification can also provide protection in protests based upon noncompliance. These considerations are both illustrated by the protest filed in opposition to the dual awards made by CAC-W in the Army Portable-2 procurement. International Data Products, Inc., Commax Technologies, Inc. B-275480.2, B-275480.3, B-275480.4, April 3, 1997. The Portable-2 procurement, like PC-2, made use of a global certification. After award, protests were filed by two unsuccessful offerors. The protesters alleged that certain products proposed by the awardees did not comply with the requirements of the solicitation.

The protests were both denied and the GAO confirmed the propriety of using a global certification instead of a detailed technical proposal for the purpose of establishing technical acceptability. The use of a certification process to establish technical

acceptability is not new. The Comptroller General had approved its use in previous decisions. Mitel, Inc., B-270138, January 17, 1996, 96-1 CPD para. 36; Kahn Industries, Inc., B-248736, September 21, 1992, 92-2 CPD para. 191; Lago Systems, Inc., B-243529, July 31, 1991, 91-2 CPD para.107. The new decision endorses the use of a global certification, but it also makes clear that a certification does not provide absolute protection from challenge. The decision holds that the use of a global certification does not protect an award from attack "where the agency has reason to question the characteristics of the products being offered."

The Portable-2 solicitation had requested the submission of technical literature to "identify products being offered." The literature was not examined by the evaluators to determine the technical compliance of the offers. As it turned out, a review of the literature submitted by one of the awardees would have disclosed that one product failed to meet a solicitation specification. Fortunately, this solitary instance of noncompliance was found not to be prejudicial. Otherwise, the award might have been overturned. As a result of the decision in the Portable-2 procurement, CAC-W has modified its practice. Any information received concerning the technical solution is carefully examined by evaluators to preclude the occurrence of surprise issues of noncompliance.

The GAO decision on the Portable-2 awards establishes that a global certification may be used to demonstrate technical acceptability. A detailed proposal with narrative and technical literature need not be solicited for that purpose. Any information related to the technical solution that is solicited, on the other hand, must be examined to ensure that it does not contain evidence of noncompliance. A risk of successful protest will remain unless such an examination is conducted effectively.

The use of a global certification has assisted CAC-W to reduce the personnel required to conduct large procurements for commercial IT items under the tradeoff process and to compress the time for such procurements to only four months. Use of the certification procedure does entail some risk that awards may include products that are not completely compliant, but the experience of CAC-W with the technique in procurements for commercial IT has been favorable. Awardees have generally done an effective job of assuring that offered products meet solicitation requirements without the type of intensive evaluation scrutiny employed in the past. As there is risk as well as benefit from this approach, a

careful analysis should be undertaken before adopting the global certification approach for other types of procurements.

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